

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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TROOPER 1,	:	22-CV-00893 (LDH) (TAM)
Plaintiff,	:	
	:	
-against-	:	United States Courthouse
	:	Brooklyn, New York
	:	
	:	January 11, 2024
	:	5:15 p.m.
NEW YORK STATE POLICE, et	:	
al.,	:	
	:	
Defendants.	:	

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TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE  
BEFORE THE HONORABLE TARYN A. MERKL  
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

For the Plaintiff	WIGDOR, LLP
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	New York, New York 10003
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	90 Broad Street
	New York, New York 10004
	BY: ALLEGRA NOONAN, ESQ.
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For the Defendant	HARRIS BEACH, PLLC
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	BY: DANIEL J. PALERMO, ESQ.

A P P E A R A N C E S:

For the Defendants MORVILLO ABRAMOWITZ GRAND IASON &  
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For the interested EISENBERG & SCHNELL, LLP  
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1 THE CLERK: Civil cause for status conference, case  
2 number 22-CV-893, Trooper 1 versus New York State Police,  
3 et al.

4 Counsel, beginning with plaintiff, please state your  
5 appearances for the record.

6 MR. LICUL: Valdi Licul and John Crain, Wigdor LLP,  
7 for Trooper 1.

8 THE CLERK: For the defendant Andrew Cuomo, please  
9 state your appearances.

10 MS. GLAVIN: Yes. Rita Glavin of Glavin PLLC for  
11 former Governor Cuomo.

12 THE CLERK: New York State Police, please state your  
13 appearance.

14 MR. PALERMO: Daniel Palermo, Harris Beach PLLC, on  
15 behalf of the New York State Police.

16 THE CLERK: For Defendants DeRosa and Azzopardi,  
17 state your appearance.

18 MS. CASSIDY: Kathleen Cassidy and Kayasha Lyons on  
19 behalf of both Defendants DeRosa and Azzopardi.

20 THE CLERK: And for Interested Party Charlotte  
21 Bennett, please state your appearance.

22 MR. EISENBERG: Herbert Eisenberg and Laura Schnell,  
23 Eisenberg & Schnell, on behalf of Charlotte Bennett.

24 Together with us today are our co-counsel in the  
25 Bennett case, Debra Katz and Kayla Morin from Katz Banks

1 Kumin. Both Ms. Katz and Ms. Morin are not admitted in the  
2 Eastern District and I just want to point that out. They're  
3 not going to speak unless required to.

4 THE COURT: Okay. Could you just tell me how to  
5 spell "Katz"?

6 MR. EISENBERG: K-A-T-Z.

7 THE COURT: The traditional spelling. I just want  
8 to make sure. The second counsel, what was her first name?

9 MR. EISENBERG: Kayla, K-A-Y-L-A, M-O-R-I-N.

10 THE COURT: Okay. Thank you.

11 And I note for Defendant Cuomo's benefit that we are  
12 starting a new transcript because the prior issues were  
13 pertinent to two dockets and you only noted your appearance,  
14 Ms. Glavin. Would you like to note the appearance of your  
15 co-counsel?

16 MS. GLAVIN: Oh, I'm so sorry, Your Honor. And my  
17 invaluable co-counsel Theresa Trzaskoma from Sher Tremonte  
18 along with Allegra Noonan from Sher Tremonte.

19 THE COURT: Thank you. Yes, we decided to split it  
20 into two transcripts so as not to confuse the issues on  
21 23-MC-1587 docket.

22 So we are here today with regard to a couple of  
23 motions pertaining to complainant Charlotte Bennett. There is  
24 a deposition subpoena as to Ms. Bennett and a document  
25 subpoena as to Ms. Bennett. There's also this issue

1 pertaining to the subpoena that was issued to Hamilton  
2 College.

3 So the motion to quash that was filed on behalf of  
4 Ms. Bennett is obviously your motion, Mr. Eisenberg. Would  
5 you like to start?

6 MR. EISENBERG: Well, it is late in the day so I'll  
7 try to be succinct.

8 I was planning to do a very different presentation,  
9 quite honestly, but I think for the purpose of moving us  
10 along, as you well know, Ms. Bennett has her own case against  
11 former Governor Cuomo, against Melissa DeRosa, against a  
12 couple of other defendants who are not parties to this matter.  
13 In that case, discovery has proceeded. We have provided close  
14 to 10,000 documents. We have depositions that have been  
15 noticed for all parties and things have been moving along. A  
16 protective order was entered into many months ago. That  
17 protective order was specific to our case pending in the  
18 Southern District of New York.

19 For the purposes of trying to address the subpoenas  
20 in this case, we are willing to expand the universe of the  
21 document production and the depositions in our case to  
22 encompass this matter presuming that we can all agree on a  
23 protective order that mirrors the one in our case and that all  
24 parties to this matter, so Mr. Licul would be, everybody would  
25 have to agree that he could participate in both that discovery

1 and in those depositions.

2 I think that would resolve or should resolve the  
3 issue of these subpoenas insofar as the subpoenas in our case  
4 are actually a bit more expansive, I believe, than the ones  
5 that have been served on us in this case and we have complied  
6 with those subpoenas and provided documents and are still in  
7 the process of doing so but we're very close to the end of our  
8 production.

9 THE COURT: Now I feel even worse about not calling  
10 your case first.

11 MR. EISENBERG: Yes. Okay. I'm with you.

12 That doesn't address Hamilton College which I would  
13 like to speak to.

14 THE COURT: Yes, we do need to address Hamilton  
15 College.

16 So with regard to that proposal, Ms. Glavin, what's  
17 your reaction?

18 MS. GLAVIN: With respect to the document subpoena,  
19 that's actually exactly what we wanted. We wanted to be able  
20 to use the documents that have been produced to us by  
21 Ms. Bennett in that case for purposes of Trooper 1 to the, you  
22 know, yes, and subject to protective orders. That's fine with  
23 us.

24 With respect to the deposition, I don't think that  
25 we can agree to one deposition because we are on different

1 discovery schedules. There are different parties. So, you  
2 know, I am sure that defendants Judy Mogul in the Charlotte  
3 Bennett case, defendant Jill DesRosiers who is a defendant in  
4 that case and Melissa DeRosa who's a defendant in that case  
5 are, you know, going to want to take Ms. Bennett's deposition  
6 and it may happen, you know, much sooner perhaps than this  
7 case because she's a party. And Ms. DeRosa is no longer, for  
8 the time being, it would appear not to be a party in this  
9 case, however, we don't have a decision and we don't know if  
10 it's going to be appealed and if it was with prejudice.

11 So the deposition, I think, is more problematic but  
12 it does resolve the document issue.

13 THE COURT: I'm smiling because Ms. Katz is like  
14 what's going on with Ms. DeRosa on her face.

15 So, Mr. Eisenberg, would you like to respond to this  
16 issue as to the deposition timing and scope?

17 MR. EISENBERG: Sure.

18 Our client shouldn't have to sit for more than one  
19 deposition with former Governor Cuomo participating in both,  
20 with Melissa DeRosa participating in both presuming she still  
21 has a foot in the door in this room. With regard to the other  
22 two defendants, they have a right to depose our client and  
23 shall do so.

24 There is certainly the burden on our client to sit  
25 for more than one deposition. The issue of her not being a

1 party here, she is not a party here, and the proportionality  
2 issues, they get everything they need by doing the deposition  
3 in our case. They've noticed her deposition. Things can move  
4 quickly, there's no reason they shouldn't.

5 I do note that there are 375 docket entries between  
6 our two cases which is remarkable. At this table --

7 THE COURT: And how many of them are in ours?

8 MR. EISENBERG: Two hundred thirteen, I believe.

9 At this table, we have probably over a century of  
10 employment law experience and we've never seen a case like  
11 this. We've never seen a case that has been so litigated with  
12 such overreach, and I would say that is overreach. You  
13 commenced this morning or this morning's hearing --

14 THE COURT: It felt like this morning.

15 MR. EISENBERG: -- talking about the parallel  
16 complexity. We are concerned that that complexity is a  
17 product of a desire to make what should be a relatively  
18 straightforward couple of cases into those that are much more  
19 complex than need be.

20 There are -- Ms. Perry talked about a conspiracy  
21 theory about her client. Ms. Katz is present here because the  
22 last time I was here, I believe, in September, there was talk  
23 about her being one of the conspirators who masterminded  
24 former Governor Cuomo's downfall. Doug Wigdor became a part  
25 of that conspiracy too. And Mr. Licul talked about Mr. Kim



1 and Ms. Clarke from the AG's Office being a separate  
2 conspiracy as well. Each of these things spin out into  
3 further and further discovery that goes much far afield from  
4 the underlying merits of these cases and it is truly  
5 troublesome. Certainly, for our client, it is troublesome.  
6 We know it's troublesome for the other third parties as well.

7 We appreciate that the Court is trying to address  
8 some of that. We might handle some things differently in the  
9 other courthouse but that's neither here nor there. We're  
10 trying to make things as smooth as possible as we can in both  
11 our case and for us in this room.

12 THE COURT: Well, I certainly appreciate that  
13 sentiment and I also, you know, had, were you not a party,  
14 would love to hear how to clear the underbrush and figure out  
15 how to get this case unstuck in terms of your ideas about how  
16 the court could have managed the case and I mean that  
17 sincerely. Unfortunately, I can't consult you because you're  
18 here in an adversarial capacity but I would love to know.

19 Mr. Licul, in terms of this accommodation with  
20 regard to the document subpoena issues, some of which you did  
21 touch upon as well in your Rule 412 motion, you know, do you  
22 concur --

23 MR. LICUL: We agree.

24 THE COURT: -- to Mr. Eisenberg's proposal?

25 MR. LICUL: We finally agree on something and I

1 think the document subpoena is fine, we will agree with that.

2 As far as -- what I'm not understanding from the  
3 Cuomo side's objections is who is prejudiced.

4 In other words, we are not going to be taking  
5 Ms. Bennett's deposition. I don't understand who is  
6 prejudiced if Ms. Bennett is deposed. If Cuomo,  
7 Governor Cuomo's side gets to depose her and all the other  
8 defendants in that case get to depose her as well, I'm not, I  
9 don't understand who would be prejudiced by that concept. No  
10 one is denied the opportunity to depose Ms. Bennett.

11 THE COURT: So Mr. Eisenberg, what is the  
12 anticipated timing of the depositions in the other case?

13 MR. EISENBERG: I actually apologize. I don't know  
14 the deposition. The discovery cutoff is the end of February.  
15 I believe the notice was for a date prior to that. We will be  
16 ready to go as soon as our document production is complete and  
17 they're ready to go.

18 Let me just add one other thing which I think is  
19 important. I've said this both in writing and twice in this  
20 courtroom. Our client doesn't know Trooper 1. Our client  
21 never had any interaction with Trooper 1. Our client is not  
22 privy to the allegations that Trooper 1 has made. There are  
23 no different questions that would ever be asked of our client,  
24 Ms. Bennett, in this case than there would be in our own case.  
25 There couldn't be. And so there's no reason to put her

1 through that more than once.

2 THE COURT: Ms. Glavin, would you like to respond?

3 MS. GLAVIN: I think we should deal with getting the  
4 documents first before dealing with the deposition because  
5 then I think it also raises, with respect to Governor Cuomo,  
6 him doing one deposition as opposed to two. So same issues  
7 that you're raising. One deposition in the two cases.

8 MR. EISENBERG: By they are not the same issues,  
9 Ms. Glavin.

10 MS. GLAVIN: What's different?

11 MR. EISENBERG: Our client's experience with former  
12 Governor Cuomo is significantly, as far as I can tell in  
13 looking at the allegations in Trooper 1's complaint, entirely  
14 different.

15 MS. GLAVIN: No. No. I think the point I'm making  
16 is that the questions, is that basically all the lawyers then  
17 do one deposition with Governor Cuomo in the Bennett case and  
18 this case.

19 MR. EISENBERG: Your Honor --

20 THE COURT: It's not a tit-for-tat.

21 MS. GLAVIN: I think it's premature.

22 MR. EISENBERG: Not only that, our client is not a  
23 party in this room.

24 THE COURT: It's not a tit-for-tat, Ms. Glavin. The  
25 issues in the cases are very different. I obviously don't in

1 any way -- no accommodation as to whether or not Ms. Bennett  
2 should have one deposition or two has any bearing on the  
3 question of whether Cuomo should have one deposition.

4 MS. GLAVIN: Okay.

5 THE COURT: They're separate and discrete inquiries.  
6 So let's not conflate the issues, please.

7 With regard to the deposition timing, do you --  
8 discovery is supposed to close by the end of February.

9 MS. GLAVIN: It's not, Your Honor. Judge Cave made  
10 that very clear at -- I think we had a conference on  
11 January 4th and she said it's very clear that that's not  
12 happening.

13 We're supposed to get together. We had talked with  
14 counsel for Bennett about getting together to discuss a  
15 workable discovery schedule because we don't have anything  
16 close. Like, we got a lot of documents within the last  
17 24 hours from Ms. Bennett. We should be producing a huge  
18 amount of documents within the next week to complete our  
19 productions. We also have been speaking with counsel for the  
20 other defendants that don't mirror each other in that case  
21 about what is a workable schedule. We actually have a call,  
22 you know, with the defense lawyers this week to talk about  
23 people's various schedules. So it's not going to be the 27th.  
24 Judge Cave made that clear it's not going to be done by the  
25 27th. So I just, I think all of the parties need to get

1 together. I mean I think I want to talk, going to talk to the  
2 other defense counsel.

3 I would also note that Ms. Bennett has sued the  
4 State in State Court with the same allegations. And I would  
5 also note that the State and State Court, when it came to the  
6 Attorney General's report, their answer, the State of New  
7 York's counsel disputed the findings in the Attorney General's  
8 report. So I just, it's going to be a little more complicated  
9 and I'd rather address the deposition question when I have a  
10 chance to talk to counsel in the other case as well as with  
11 Ms. DeRosa and Mr. Azzopardi's counsel in this case.

12 THE COURT: Okay. So I think we'll need to defer  
13 the question -- the timing of Ms. Bennett's deposition and the  
14 question of whether or not a single deposition could  
15 accommodate the needs of both cases.

16 I do note, Ms. Glavin, as Mr. Eisenberg accurately  
17 points out, she's a non-party. She never met Trooper 1  
18 allegedly. If that's true, it's hard to know what additional  
19 scope would be needed at a second deposition for Ms. Bennett.  
20 So I do think that in the interests of efficiency and treating  
21 any human being with, you know, just the dignity and respect  
22 of not putting them through two depositions if we don't need  
23 to, that we should seriously consider that as an option.

24 So I would ask the parties to meet and confer about  
25 that. Timing, of course, will need to be determined. So I'm

1 not going to rule as to the timing for any depositions today.

2 Mr. Eisenberg?

3 MR. EISENBERG: If I can make one offer. Surely  
4 were they to take Ms. Bennett's deposition in our case and  
5 were they to believe that they needed something else in this  
6 matter, at that point, we could meet and confer and have that  
7 discussion. I like to think we'll be able to resolve that  
8 very quickly.

9 I also have one other thing I want to point out  
10 which is troublesome to our team. There have been a number of  
11 subpoenas in our case that relate directly to Trooper 1 and as  
12 I have repeatedly stated, Trooper 1, Ms. Bennett doesn't know  
13 Trooper 1. She doesn't know who she is. I don't know that  
14 they have a relationship but they don't. They don't know one  
15 another.

16 So, for example, there was a telephone record  
17 subpoena served in our case with just the phone number. We  
18 didn't know whose phone number it was. It turned out that was  
19 Trooper 1's phone number. We didn't challenge it. We didn't  
20 know who it was and they would say we didn't have standing to  
21 challenge it.

22 THE COURT: This issue did come to my attention last  
23 week. I understand they have the phone records.

24 MR. EISENBERG: So that is troublesome. They're  
25 using discovery in my case, my client's case, to advance their

1 needs in this case without the Court's supervision. The same  
2 thing happened with the subpoena of June Kim and Clark where  
3 they sought, in their subpoenas of those two individuals  
4 Trooper 1 documentation.

5 Trooper 1 is not part of Charlotte Bennett's case.  
6 Charlotte Bennett shouldn't be part of Trooper 1's case.

7 MS. GLAVIN: So, Your Honor, on this point,  
8 Trooper 1 is listed in the Rule 26 disclosures. There was no  
9 representation made by Charlotte Bennett's attorneys that  
10 Trooper 1 would not be part of their case until the  
11 January 4th conference before Judge Cave.

12 All of the subpoenas that had anything to do with  
13 Trooper 1 in the Bennett case were based on the fact she's  
14 listed as a witness in their Rule 26 disclosure. We heard for  
15 the first time on the 4th, after the phone records subpoena  
16 had been served and we got returns, that is the first time a  
17 representation was made in court that Ms. Bennett is not going  
18 to rely on anyone else's allegations. It's the first time we  
19 heard it.

20 MR. LICUL: Well --

21 MS. GLAVIN: So the question is why did they include  
22 Trooper 1 in their Rule 26 disclosures.

23 MR. EISENBERG: Trooper 1 doesn't appear in our  
24 complaint at all and there were representations made in this  
25 court and by letter that my client doesn't know Trooper 1. To

1 ask for phone records of Trooper 1 in Charlotte Bennett's case  
2 doesn't go to anything that is probative in our case.

3 THE COURT: Is she listed in your Rule 26(a)?

4 MR. EISENBERG: I believe she is.

5 MR. LICUL: Your Honor, the other thing is, and I do  
6 give credit to my adversaries here for letting me know they  
7 got the phone records and not reviewing them but, nonetheless,  
8 we sat here on December 12th and had an oral argument about  
9 the phone records and about the scope, and Your Honor directed  
10 us to meet and confer on it. Obviously, we couldn't reach a  
11 conclusion but it would have been helpful to know that they  
12 had been subpoenaed in another case. I mean, I think, you  
13 know, I think Your Honor last time ruled on the phone records  
14 and there was sort of an argument that, well, what's done is  
15 done. I'm not -- those are not literally the words.

16 THE COURT: No. I said I can't possibly rule on the  
17 granularity of the phone records that nobody has reviewed.  
18 Those are my words.

19 MR. LICUL: Well, right, but by that rationale --

20 THE COURT: And you have the first opportunity to  
21 review that for objections.

22 MR. LICUL: I understand.

23 THE COURT: That's the why we left it because that's  
24 how the chips fell.

25 (Continued on next page.)



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1 (Continuing)

2 MR. LICUL: Understood. But clearly, Mr. Cuomo's  
3 side knew that we were objecting to the subpoena of our  
4 clients's phone records in this case, and it would have been  
5 helpful for them to know we objected to them in the other  
6 case.

7 THE COURT: Certainly.

8 Ms. Glavin, why didn't you disclose that to Mr.  
9 Licul and/or the Court?

10 MS. GLAVIN: With respect to the phone records,  
11 actually, I will tell you this, Your Honor, we had done so  
12 many subpoenas in the Charlotte Bennett case that I didn't  
13 remember. But the one thing that I was conscious of is that  
14 we had had other parties that get notice from the phone  
15 companies. We fully expected that Trooper 1 would get the  
16 notice other people have gotten and objected.

17 THE COURT: Look, as I said on the phone with regard  
18 to trying to narrow the date range and/or the communications  
19 that could be culled from those phones records, it's  
20 unfortunate -- it's probably not a strong enough word -- that  
21 this happened the way it did. Please don't let it happen  
22 again. Please maintain communicating with Mr. Licul if you  
23 know there is something pending before this Court or is  
24 subject of active litigation. I can understand the concerns  
25 that Mr. Licul and Mr. Eisenberg has raised.

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1           That being said, what's done is done. I can't undo  
2 it, the phone records now exist. Mr. Licul is getting first  
3 crack at them. As we discussed on the phone the other day,  
4 you will let me know if you have motions related to the phones  
5 after you had an opportunity to discuss with Ms. Glavin what  
6 you would like to hold back.

7           MR. LICUL: Thank you, Your Honor.

8           THE COURT: All right. With regard to the Hamilton  
9 College subpoena, Mr. Eisenberg. First of all, thank you for  
10 raising your concern with regard to the discovery issues and  
11 the parallel nature of the items sought. This leads somewhat  
12 into the Hamilton College situation.

13           Mr. Eisenberg, I fully understand your argument as  
14 to why you believe that the Hamilton College information is  
15 intrusive and irrelevant in this case. Mr. Licul has also  
16 moved to quash the Hamilton College subpoena on Rule 12  
17 grounds. As we've discussed today, one of the bases for Rule  
18 12 is, of course, privacy concerns. Given the accommodation  
19 that has been reached in the Southern District case, I'm  
20 wondering what additional considerations I should be  
21 considering, what additional arguments you have with regard to  
22 Hamilton College subpoena now that the information is out  
23 there.

24           MR. EISENBERG: I would put a capital R on the word  
25 relevancy. I also must note Hamilton College subpoena was

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1 responded to by Hamilton College I guess about a month ago.  
2 We haven't heard anything since. My presumption is it wasn't  
3 a fruitful endeavor.

4 MS. GLAVIN: It was a very fruitful endeavor,  
5 actually, from our perspective. But the point being is we  
6 have the documents.

7 THE COURT: Please let him finish.

8 MR. EISENBERG: They certainly haven't renewed the  
9 efforts to depose the president of Hamilton College, which was  
10 one of the things that was going to occur. And, so, Charlotte  
11 Bennett's situation at Hamilton College, while she was a  
12 student in her late teens, early 20s, perhaps, is of no moment  
13 in this room, in this courthouse. We don't think it has  
14 anyplace in our case. We surely think it has less of a place  
15 in Trooper 1's case.

16 THE COURT: For purposes of discovery, we are  
17 obviously here to determine sort of rules of the road for  
18 exchange of information, not relevance as to whether or not  
19 things are going to come in at trial, right. So without  
20 prejudice to any arguments you may seek to make under  
21 relevance, Rule 412, prior bad acts, anything whatsoever, any  
22 arguments you would choose to make to preclude  
23 cross-examination or further discussion of Hamilton College in  
24 this courthouse would remain available to you whether it is  
25 deemed part of the discovery in this case or not. So what I

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1 am trying to understand sincerely is this fight over Hamilton  
2 College something we can resolve with papers and protective  
3 orders. It exists in the discovery file with no finding as to  
4 relevancy in the current case because it is already in the  
5 discovery file in a parallel -- parallel is not the right word  
6 for it. But my issue is this fight seems somewhat esoteric  
7 now that he has this stuff.

8 MR. EISENBERG: Your Honor, I'm going to quote you,  
9 if I might, you characterized the efforts to get Hamilton  
10 College's documentation as scorched-earth litigation.

11 THE COURT: And I still think that's right with  
12 regard to the relevance.

13 MR. EISENBERG: When you talk about rules of how we  
14 are going to run things in this room, that should inform your  
15 judgment.

16 THE COURT: But there's nothing to quash. They  
17 already have the documents. So what I'm not understanding  
18 literally is the esoteric question of what you're asking me to  
19 do here.

20 MR. EISENBERG: I would suggest that insofar as we  
21 are in a different forum across the river there be a firewall  
22 on this issue notwithstanding the fact they have already seen  
23 those documents subject to our protective order in the  
24 Southern District.

25 THE COURT: Ms. Glavin.

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1 MS. GLAVIN: The problem with the firewall is again  
2 if we have one deposition. So I just -- I don't think Your  
3 Honor needs to rule on the Hamilton College documents. If and  
4 when they come up in this case, we can deal with it.

5 THE COURT: I mean, they are not part of the  
6 discovery in this case necessarily and that's the issue  
7 because they are subject to a protective order in the Southern  
8 District case. I assume that protective order, Mr. Eisenberg,  
9 includes no outside use of the information for any purpose.

10 MR. EISENBERG: That is correct.

11 THE COURT: So the standard for modifying the  
12 protective order is not low in the Second Circuit.

13 MS. GLAVIN: It's not what?

14 THE COURT: Not low, the standard for modifying a  
15 protective order. So to me this issue has morphed from a  
16 question of whether or not former Governor Cuomo can sort of  
17 get the documents to see them in connection with these cases  
18 to a question of whether they can be used in this case, and I  
19 am just trying to ask you the question, Mr. Eisenberg, if that  
20 determination can wait for motions in limine practice or  
21 whether it needs to be part of the discovery practice?

22 MR. EISENBERG: Give me one second.

23 THE COURT: Please.

24 (Pause.)

25 MR. EISENBERG: Your Honor, the only issue that

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1 concerns us is we don't have standing to make motions in  
2 limine argument in this forum.

3 THE COURT: No, you don't. You have to wait for the  
4 trial.

5 MR. EISENBERG: No, even for the trial here.

6 THE COURT: Mr. Licul does, and you can be heard as  
7 an interested party.

8 MR. EISENBERG: With that representation and the  
9 opportunity to be heard on that issue, we will await the trial  
10 and the motions in limines with regard to Hamilton College.

11 THE COURT: Does that work for you, Ms. Glavin?

12 MS. GLAVIN: It does, Your Honor. There was one  
13 request that I had is the ability to share the Hamilton  
14 documents with the parties in the case, in this case, subject  
15 to the protective order as a confidentiality designation.

16 Do you have an issue with us sharing with the State  
17 Police counsel in terms of this case, the Hamilton documents?

18 THE COURT: If you would like to go for one  
19 deposition, that may be prudent. I don't know. Discuss  
20 amongst yourselves.

21 MS. GLAVIN: You can --

22 MR. EISENBERG: Well, we need to rework the  
23 protective order.

24 MS. GLAVIN: That's fine.

25 MR. EISENBERG: Then I think we are okay with it.

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1 THE COURT: Are you willing to work on reworking the  
2 protective order?

3 MR. EISENBERG: Of course.

4 THE COURT: So subject to re-working of the  
5 protective order or extension of the protective order or a  
6 change of the protective order in this case, whatever  
7 protective orders you need to to facilitate that, the Court  
8 is, of course, available. If you have a revised a protective  
9 order as to this specific issue, you should feel free to  
10 submit it. We can give a deadline of a couple of weeks, Mr.  
11 Eisenberg.

12 MR. EISENBERG: I think that would be fine.

13 THE COURT: So if there are any revisions in the  
14 protective order, but we will include that in the order to be  
15 issued. And I will note that this ruling is subject to --  
16 certainly preserving all available rights to argue against the  
17 admissibility of these records in the event of trial made by  
18 both counsel for Trooper 1 and counsel for the complainant  
19 and. I think that that's a very reasonable strategy.

20 I'm very sensitive to the Rule 412 considerations  
21 that you have raised, and I still view this subpoena as a  
22 scorched-earth impact with regard to this particular  
23 complainant given the age of those records and the age that  
24 she was at the time and all of the other considerations that  
25 come into play with regard to Rule 412, but not my call with

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1 regard to whether it's going to come in at trial.

2 Ms. Glavin, is there anything else we should discuss  
3 with regard to Ms. Bennett?

4 MS. GLAVIN: No, Your Honor.

5 I do want to make one observation, the age of the  
6 records on Hamilton College. Just so Your Honor knows, Ms.  
7 Bennett went to go work for the governor within a year or so  
8 after she was at Hamilton. They are very close in time. And,  
9 you know, contrary to what Mr. Eisenberg said, we think  
10 they're very helpful, certainly to our defense in the Bennett  
11 case. But we can address that in front of Judge Cave.  
12 Fortunate for you. It's good to see you.

13 THE COURT: Is there anything else that we should  
14 address as to the motions that are here now.

15 Poor Mr. Palermo has been sitting here patiently for  
16 four hours. Is there anything you would like to raise, sir?

17 MR. PALERMO: No, nothing for the State Police.

18 THE COURT: Ms. Cassidy, is there anything further  
19 on behalf of Mr. DeRosa and Mr. Azzopardi.

20 MS. CASSIDY: One quick thing, Mr. Azzopardi is not  
21 a party to the Bennett case and I don't believe that there  
22 have been -- that the documents that reference him or that are  
23 with him would have been a part of the discovery in that case.

24 MR. EISENBERG: I don't believe so either.

25 MS. CASSIDY: I don't know that any exist.



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1 MR. EISENBERG: We also don't believe he is a party  
2 in this case.

3 MS. CASSIDY: We don't believe so either.

4 THE COURT: The future is unclear as to Mr.  
5 Azzopardi, because he has been dismissed, obviously, but we  
6 don't know if that has been without prejudice. As we've  
7 discussed, it's a little murky at the moment.

8 So in terms of your document 154-1 applying the  
9 correct subpoena to the correct case, thank you for that  
10 correction earlier, the subpoena that you had issued -- that  
11 had been issued on behalf, I should say, Defendants DeRosa and  
12 Azzopardi, sought documents reflecting communications with  
13 those two defendants, including, but not limited to,  
14 communications with the Attorney General's Office,  
15 communications with a certain other complainants, reporters,  
16 social media posts, et cetera, Mr. Eisenberg, have you had an  
17 opportunity to meet and confer with counsel as to this  
18 subpoena?

19 MR. EISENBERG: I must say no, we haven't. However,  
20 arguments that I made with regard to the former Governor Cuomo  
21 are exactly the same. We have supplied documents to Ms.  
22 DeRosa at the same time as we had supplied them to former  
23 Governor Cuomo.

24 With regard to Mr. Azzopardi, again, if I recall  
25 what the allegations in Trooper 1's case vis-à-vis Mr.

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1 Azzopardi, they are even further afield than Ms. Bennett.  
2 She's got nothing with regard to Mr. Azzopardi. She's got  
3 nothing.

4 THE COURT: That very well may be the situation, Ms.  
5 Cassidy. So rather than torturing ourselves with regard to  
6 trying to ascertain whether or not any of this is  
7 proportional, the answer may be that there's just nothing to  
8 produce. The allegations in the Azzopardi case are narrow.  
9 There is no suggestion, and Mr. Licul can correct me, that Ms.  
10 Bennett was involved with Mr. Azzopardi in any way. Do you  
11 know of --

12 MR. LICUL: There isn't.

13 THE COURT: So I think the factual nexus as to these  
14 particular issues, nonparty Ms. Bennett and quasi party Mr.  
15 Azzopardi are very likely to be nothing. I doubt there is any  
16 connection.

17 MR. EISENBERG: Your Honor, I must step back a  
18 moment. We will check to make certain that my representations  
19 are actually accurate. We believe that to be the case. There  
20 might be some concern of post-termination disparagement of Ms.  
21 Bennett and we need to see whether there is any documentation  
22 of that.

23 THE COURT: Mr. Eisenberg, if you and your team  
24 could please review. Azzopardi is obviously an exceptional  
25 unique search term, a beautiful thing. So if you could please

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1 search for any sort of information that may exist as to Mr.  
2 Azzopardi and confer with Ms. Cassidy. I think the issues as  
3 to that document request are easily resolved.

4 MS. CASSIDY: Thank you.

5 THE COURT: So we could leave it -- I'm not sure if  
6 this is pending as an official motion. Is this pending as an  
7 official motion or is this kind of like an FYI situation?

8 MS. CASSIDY: There was a letter, a joint letter  
9 filed at document 153. That was before the dismissal. So  
10 nothing more has happened since then.

11 MR. EISENBERG: Right.

12 THE COURT: I see. It was originally docketed as a  
13 motion to file something under seal, and I believe we granted  
14 that motion, and then there is no additional motion pending.  
15 If something comes to light that the parties cannot reach an  
16 accommodation on -- I'm sorry, not the parties, that these two  
17 people who are still involved in this case who are not  
18 actually parties, Ms. Bennett and Mr. Azzopardi, if there is a  
19 live dispute, if you could please utilize my --

20 MR. EISENBERG: I will close that circle up, Your  
21 Honor.

22 THE COURT: We can close it up quickly, I imagine.  
23 Anything else we should address today, Mr. Licul?

24 MR. LICUL: I know this is not on the calendar for  
25 today. I want to get a sense of -- we have two motions

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1 pending to compel Mr. Cuomo's deposition.

2 THE COURT: Yes.

3 MR. LICUL: Pending since August.

4 We propose another date. Obviously, the Court  
5 understands our position is that he doesn't get to wait until  
6 the end. I want to make sure this is not a situation where  
7 that's happening sort of by default.

8 THE COURT: My actual intention is to work on  
9 resolving these motions and then the discussion we had in  
10 December with regard to working to resolve some of the other  
11 motions pertaining to the other complainants to provide some  
12 guidance as to how we're going to be handling the sort of  
13 order of discovery.

14 The concern I had about the timing considerations  
15 with regard to the joint deposition for Ms. Bennett is that  
16 actually may be inconsistent with some of the timing  
17 considerations that we had anticipated and had discussed in  
18 December, which was working on get party discovery done and  
19 then turning to nonparty discovery. But, of course, if it is  
20 in the interest of, you know, both cases to have that  
21 deposition be a joint deposition, things can go slightly out  
22 of order. But the timing of Mr. Cuomo's deposition is very  
23 much on top of my mind in terms of staging this discovery.

24 MR. LICUL: Thank you, Your Honor.

25 MS. GLAVIN: Your Honor, with respect to that too as

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1 well, one of the reasons is we want to get documents, like we  
2 just got like the executive chamber, we just got them and  
3 we're not even a quarter of the way through. There's a lot of  
4 them and it's causing us to go back for followup requests,  
5 because if they have a lot of stuff that he doesn't have and  
6 it dealt with what he was doing in 2015, 2016, 2017, that he  
7 doesn't remember.

8 THE COURT: I know. And that's part of the  
9 challenge, Mr. Licul. As we talked about in December, having  
10 enough documents in hand on both sides of the aisle to conduct  
11 depositions.

12 MR. LICUL: But other depositions aren't going  
13 forward, that is my concern.

14 THE COURT: Not from plaintiffs, right?

15 MR. LICUL: I don't know. We have been coordinating  
16 at least on scheduling things.

17 MS. GLAVIN: No, we took the deposition of Ana  
18 Liss-Jackson.

19 MR. EISENBERG: Is it okay that a couple of us are  
20 excused?

21 MS. GLAVIN: Like, Your Honor, I would like to  
22 certainly revisit the deposition order. We just want to get  
23 some documents.

24 THE COURT: I know. We are trying to get these  
25 subpoenas out.

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1 MS. GLAVIN: Thank you.

2 THE COURT: I'm certainly not planning to get  
3 involved in scheduling depositions date by date, but I do  
4 think that the general principle that we have to get the  
5 documents flowing and get some of these documents exchanged  
6 prior to party depositions is understandable. I also think  
7 that it is not unreasonable to have the nonparty depositions,  
8 for the most part, follow the party depositions. But  
9 ultimately this stuff is really up to you guys.

10 I should not be involved in deciding when you are  
11 going to depose whom. The motion to compel is clearly  
12 meritorious. He has to sit for deposition. He is a party.  
13 The question is when.

14 MR. LICUL: Exactly. I think where we disagree is  
15 whether he gets to wait it out and wait until the end. Our  
16 position, and I think some of the nonparties have also  
17 proposed this, is to schedule the parties deposed followed by  
18 the non-parties. I only raise that to remind the Court that  
19 that is still outstanding. I have no problem with waiting to  
20 depose the Governor until after documents are produced.  
21 That's fine.

22 THE COURT: Right.

23 MR. LICUL: It's the latter part that I anticipate  
24 about having him wait until everyone else is deposed that I  
25 have an issue with.

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1 THE COURT: I fully understand. I certainly have  
2 not lost track of that issue.

3 Anything else, Mr. Licul?

4 MR. LICUL: No, thank you very much.

5 THE COURT: Ms. Glavin?

6 MS. GLAVIN: No, Your Honor.

7 On the Governor's deposition, of course he is going  
8 to be deposed. There may be some nonparties, a couple in  
9 particular that we want, but I don't think that's before the  
10 Court today.

11 THE COURT: It's not before the Court. I'm not  
12 going to issue advisory opinions as to who should be deposed  
13 before we get these documents problems untangled.

14 All right. Thank you guys. Have a good night.

15 MR. LICUL: Thank you, Your Honor.

16 MS. CASSIDY: Thank you, Your Honor.

17 MS. GLAVIN: Thank you.

18 (Matter concluded.)  
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